

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-63

In re Applications of

NADINE P. RICHARDSON File No. BPH-901221MG
d/b/a ROCKY MOUNT
BROADCASTING
(hereafter "RMB")

ORCHON BROADCASTING File No. BPH-901221MI
COMPANY, INC.
(hereafter "Orchon")

For Construction Permit
for a New FM Station on
Channel 239A (95.7 MHz)
in Greenville, Georgia.

HEARING DESIGNATION ORDER

Adopted: March 23, 1992;

Released: April 13, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.¹

2. *Preliminary matters.* RMB, on April 10, 1991, filed a Petition to Deny against Orchon's application. According to RMB, it is impossible to determine whether Orchon's proposal adequately covers the community of license. RMB asserts that this is so, because Orchon's coverage map is smudged, making it impossible to clearly determine the community's boundaries. On April 22, 1991, Orchon filed an Opposition to RMB's Petition, noting that the original copy of its application adequately depicts the requisite boundaries. An examination by the Commission staff of that copy reveals that it does, in fact, clearly and legibly delineate the city boundary of Greenville. Thus, the map satisfies the FM "hard look" processing requirements. *See Richard Culpepper*, 5 FCC Rcd 2983 (1990).² Accordingly, RMB's petition will be denied below.

3. RMB submitted an amendment on November 8, 1991, addressing the issue of RF exposure to workers on its proposed tower. This amendment was filed after the designated period for filing amendments as of right. The defect which this amendment seeks to cure is classified as a "grantability" defect, and thus would require the designation of an environmental issue against RMB. The amendment has been studied by the staff and found to

specify an appropriate means for protecting persons authorized to be on the RMB tower. The amendment will therefore be accepted for purposes of administrative convenience, as it eliminates the need for a hearing on this issue. RMB will, however, be permitted no comparative advantage as a result of this amendment.

4. *Orchon.* An engineering study based upon OST Bulletin No. 65, 1985 entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation" reveals that Orchon did not sufficiently address the issue of potential occupational hazards caused by the proposed facility. Therefore, Orchon must submit, within thirty days of the date of this order, an amendment that explains what steps will be taken to limit RF exposure to workers authorized access to the tower site. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the amendment, that Orchon's proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the judge shall thereafter not consider the environmental effects of the proposal. *See* 47 C.F.R. § 1.1308(d).

5. Orchon petitioned for leave to amend its application on December 4, 1991. The accompanying amendment was filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, and comparative advantage resulting from the amendments will be disallowed.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Orchon in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

¹ An application filed by Greenville Communications, Inc. (File No. BPH-901221MH) was dismissed on August 29, 1991 for failure to pay the hearing fee.

² *See Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, 50 Fed. Reg. 19,936 (May 13, 1985).

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the petition to deny filed by RMB on April 10, 1991, IS DENIED.

9. IT IS FURTHER ORDERED, That, in accordance with paragraph 4 above, Orchon shall submit an amendment to the presiding Administrative Law Judge describing the steps it will take to limit RF exposure to workers authorized access to the tower site.

10. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party, respondent herein shall, pursuant to Section 1.221 (c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required material may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd. 3403 (1991).

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

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